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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the	)	
Telecommunications Act of 1996:	)	
	)	CC Docket No. 96-115
Telecommunications Carriers' Use	)	
Of Customer Proprietary Network	)	
Information and Other Customer	)	
Information	)	
	)	

OPPOSITION AND COMMENTS OF SPRINT CORPORATION

Sprint Corporation ("Sprint"), pursuant to Section 1.429(f) of the Commission's rules, 47 C.F.R. §1.429(f), hereby respectfully submits its opposition to and comments on the Petitions for Reconsideration of the *Second Report and Order*, FCC 98-27, released February 26, 1998, in the above-referenced proceeding (*CPNI Order*) filed by various parties.

I. THE COMMISSION SHOULD ELIMINATE THE PROHIBITION AGAINST USING CPNI TO WIN BACK CUSTOMERS.

Sprint strongly agrees with those petitioners that urge the Commission to reconsider and rescind its decision to prohibit carriers from using a former customer's CPNI in an attempt to win back the business of such customer. As these petitioners explain, the Commission's decision is antithetical to competition and harms consumers by depriving them of service options and innovations tailored to their individual needs that their former carriers would be able to design using their CPNI in an attempt to win back their business. *See, e.g.*, AT&T at 3 ("... use of CPNI for win-back marketing is the hallmark of competition in that carriers would make

competing customized offers to the same customer."); SBC at 9 (win-back efforts "are clearly pro-competitive -- they provide additional choices to consumers and allow providers of goods and services to compete on the merits."); Frontier at 8 (use of CPNI for win-back enables "a carrier to design[] ... a package of service offerings that could better meet that customer's needs" and "provides a form of comparison shopping for the customer -- a direct comparative offer that can serve the customer's interest."); PCIA at 10; and ALLTEL at 7.

In its brief discussion of its ban on the use of CPNI in win-back marketing efforts (*CPNI Order* at ¶85), the Commission does not explain why the public interest requires that consumers be deprived of the competitive benefits such efforts would produce. Rather, the Commission's entire rationale for the ban is based on the its view that there is no language in Section 222 that permits carriers to use CPNI "for 'customer retention' purposes." Of course, this same reasoning supports allowing carriers to use CPNI for win-back marketing since there is no language in Section 222 that compels banning the use of CPNI for such purposes. But the fact is that, as several of the Petitioners point out, the Commission misreads Section 222 in this regard. *See, e.g.*, AT&T at 2-3 ("Section 222(d)(1) of the Act, properly construed, allows the use of CPNI to initiate and render service, including to a former customer."); Frontier at 8 (use of CPNI to win back former customers is envisioned under the language of Section 222(c)(1)(A) of the Act); and PCIA at 10.

In any case, it would appear that the primary danger the Commission seeks to address by adopting the ban is the possible anti-competitive use of CPNI by the BOCs and perhaps other ILECs that remain the gatekeepers for all changes in service providers. The Commission's entire discussion of the ban centers on allowing carriers to use CPNI for "customer retention purposes,"

CPNI Order at ¶85, as opposed to their using CPNI for purposes of regaining customers that have already been switched to competitors.

Sprint agrees that competition is harmed if the BOCs and other ILECs are allowed to exploit their gatekeeper status and use CPNI in an attempt to "retain[] a customer that had already undertaken steps to change its service provider," *id.*, before implementing the switch of such customer to its chosen service provider. Generally, it is easier to convince a customer not to switch carriers than it is to persuade a customer that has already switched to another carrier to switch back. But IXCs do not have the ability to harm competition in this fashion. An IXC typically learns that a customer has changed carriers only after the switch has occurred and it is so notified by the customer's local carrier. Thus, an IXC would not be able to use CPNI to "retain" a customer; rather, it could only use the information to "regain" a customer's business already lost to a competitor.[1]

Unfortunately, the Commission has ignored this distinction in formulating its rule regarding the use of CPNI for win-back marketing. It views carriers' efforts to retain customers before they have switched service providers and carriers' efforts to regain customers after they have switched to other service providers as one and the same. It has characterized both types of activities as "win-back" marketing and proscribed the use of CPNI in both instances. It has done so regardless of the fact that use of the CPNI for retention efforts is undoubtedly anti-competitive, while the use of CPNI in attempting to regain a customer's business clearly enables customers to enjoy the fruits of competition.

[1] A carrier that is seeking to regain such customer's business but is unable to use information about a former customer gathered when during the time the customer took service from the carrier is at a significant disadvantage. This is so because a customer would find it strange and be unlikely to return to its former carrier if the sales representative of such carrier did not discuss details of the previous customer/carrier relationship and instead presented the sales pitch as if such previous relationship did not exist.

For this reason, Sprint believes that a more discriminating approach is necessary here. Frontier suggests that the Commission limit the ban on the use of CPNI for win-back marketing to the largest ILECs. Petition at 9. But this suggestion makes the same mistake as the Commission by lumping both "retention" and "win-back" efforts together. Moreover, there is no logical reason to continue to prohibit large ILECs from using CPNI to regain a former customer's business once that customer has been switched to another service provider but at the same time permit the use of CPNI by IXCs and smaller ILECs in such "win-back" efforts.

MCI suggests that the rule be "directed only at retention marketing by ILECs." Sprint agrees that this is a reasonable approach.[2] ILECs would not be allowed to use CPNI in an effort to retain a current customer after they receive an order to change such customer's service provider but before they actually implement the change. It is during this period that the ILECs would be able to exploit their status as gatekeepers to the detriment of competition and, therefore, all retention marketing effort by the ILECs -- including the use of CPNI to make offers to departing customers -- should continue to be banned. The carrier change process should be administered in as mechanical and neutral fashion as possible.

After the switch is implemented, however, the ILECs should be allowed to use CPNI in marketing efforts designed to win back the business of their former customers. In this regard, they are in the same position as IXCs that have lost customers to other service providers and like the IXCs they should be able to use CPNI to seek to regain the business of such customers. The Commission's current win-back rule therefore should be amended to enable all carriers to use CPNI to regain former customers that have already been switched to other service providers.

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[2]Sprint's agreement here assumes that because of MCI's use of the term "retention marketing," MCI would allow ILECs to use CPNI to regain the business of their former customers once such customers have been switched to competing providers.

II. THE SUGGESTION THAT THE NON-BOC ILECS BE BANNED FROM SHARING INFORMATION WITH THEIR AFFILIATES TO THE EXTENT ALLOWED UNDER THE COMMISSION'S TOTAL SERVICE APPROACH SHOULD BE REJECTED.

In its Reconsideration Petition, Sprint argued that the Commission must reverse its decision allowing a BOC to share its customer's local CPNI with its interLATA affiliate providing interLATA services to such customer without first obtaining customer approval. Sprint agreed with the views of Commissioner Ness, who explained that the majority's decision in this regard is incompatible with the structural separation requirements imposed by Section 272 of the Act and confers an unwarranted competitive advantage on the BOC's interLATA affiliate *vis-à-vis* an unaffiliated IXC. Sprint urged the Commission to adopt Commissioner Ness' proposal for reconciling Sections 272 and 222 by requiring a BOC interLATA affiliate to obtain the consent of its customer before being afforded the local CPNI of such customer. Sprint Petition at 6-8.

Several other petitioners, *e.g.*, AT&T, Comptel and MCI, also demonstrate that the Commission's decision eliminates the competitive safeguards enacted by Congress under Section 272. Some of them, however, argue that the same requirements governing CPNI sharing between a BOC and its interLATA affiliate which are necessary because of Section 272's structural separation mandate should also be applied to all other ILECs with respect to sharing CPNI with their interLATA affiliates. According to these petitioners, the dominant position of ILECs in their respective service territories and the requirements of Sections 201 and 202 of the Act require such similarity of regulatory treatment. *See* MCI at 18-20; Comptel at 11-15; LCI at 11-15. The Commission has already rejected the notion that non-BOC ILECs should be singled out

for different treatment under the Commission's CPNI rules.[3] Petitioners offer no reason why the Commission should revisit this decision.

For example, MCI's claim that Section 201 and 202 require that the BOC-specific Section 272 requirements be applied to all ILECs is simply at odds with fundamental principles of statutory construction. It would eviscerate the explicit distinctions between the BOCs and other telecommunications carriers that were enacted by Congress. Had Congress wanted non-BOC ILECs to be subject to the same nondiscrimination requirements in their relationship with their interLATA affiliates as it has imposed upon the BOCs in their relationship with their interLATA affiliates, it would have done so directly, presumably by making Section 272 applicable to all ILECs instead of limiting that provision to the BOCs.

Moreover, MCI's proffered justification for having the Commission invoke Sections 201 and 202 to subject non-BOC ILECs to the same CPNI-sharing restrictions that should be applied to the BOCs under Section 272 does not withstand scrutiny. As discussed, MCI claims that such restrictions are necessary because like the BOCs, non-BOC ILECs are dominant in their respective territories. MCI at 18-19. But, MCI's argument here ignores the fact that there are significant differences between the market power of the BOCs and the market power of other ILECs. In contrast to non-BOC ILECs whose local exchange territories tend to be dispersed and predominately rural, the BOCs' territories encompass large, contiguous areas with major urban centers. This, in turn, gives the BOCs tremendous market power for which more stringent regulatory safeguards are necessary.

Congress has recognized that differences in market power warrant differences in

[3] *CPNI Order* at ¶49 and ¶193. Of course, the Commission's decision in this regard also refused to single out BOCs for different treatment under the CPNI rules, but, as explained by Sprint and others, Section 272 requires such different treatment with respect to CPNI sharing.

regulatory treatment. Thus, the Telecommunications Act of 1996 applies stricter non-discrimination and market entry standards to the BOCs than to other ILECs. The Commission also has long applied more stringent regulatory scrutiny and safeguards to the BOCs than to other ILECs. For example, non-BOC ILECs (with the exception of GTE) were not subject to the Commission's original CPNI rules adopted in the Commission's *Computer III* proceeding for the BOCs. *See CPNI Order* at ¶7 and cases cited therein.

MCI does not argue that the ILECs that were exempted from the Commission's *Computer III* CPNI regulations exploited their market power and used their customers' CPNI to the detriment of competition. Rather, the only evidence produced by MCI which it claims supports applying the same CPNI rules to both BOCs and non-BOC ILECs alike is SNET's abuse of the PIC-freeze process to the benefit of SNET's long distance affiliate. MCI at 20-21. Sprint too is concerned about such anticompetitive actions by SNET. But, the fact that a customer has instituted a PIC-freeze may not be CPNI as defined in Section 222. Moreover, SNET's abuse of the PIC freeze process can be, and presumably is being, addressed in the context of MCI's complaint against SNET and in the Commission's proceeding on slamming in CC Docket No. 94-129. SNET's anti-competitive action with respect to PIC freezes does not justify invoking Sections 201 and 202 to subject all non-BOC ILECs to the same CPNI regulations that should be made applicable to the BOCs in accordance with the requirements of Section 272.

In any case, MCI's reliance on Section 201 and 202 here proves too much. These statutory provisions apply to both dominant and nondominant carriers alike. If, as MCI argues, such provisions require that non-BOC ILECs be subject to the same CPNI regulations required for the BOCs in light of Section 272, regulatory symmetry would appear to warrant that non-dominant carriers also be subject to these same rules. At least in this regard, both non-BOC

ILECs and non-dominant carriers are similarly situated, since there is no evidence to suggest that they have exploited their access to CPNI to harm competition. Sprint would note, however, that MCI does not advocate that the sharing of CPNI among its affiliates should be subject to the same rules that it advocates for the BOCs.[4]

III. THE COMMISSION'S REQUIREMENT THAT CARRIERS IMPLEMENT AUDIT SYSTEMS IS NOT JUSTIFIED.

There is virtually unanimous agreement among the petitioners that the Commission's requirement that carriers establish "electronic audit mechanism that tracks access to customer accounts," *CPNI Order* at ¶199, must be rescinded. As Sprint and others have explained, such requirement simply cannot be justified under a cost/benefit analysis. *See, e.g.,* Sprint at 3-6; AT&T at 8-13; MCI at 34-43; LCI at 2-6; Frontier at 3-5; BellSouth at 18-23; and Ameritech at 8-9.

Some parties suggest that a more limited requirement for audits be adopted. For example, MCI proposes that the requirement "be limited only to instances to which customer data is accessed for sales and marketing purposes." MCI at 39. *See* also Ameritech at 9 (audit requirement should apply "only when final customer account record systems are accessed for marketing, sales or account inquiry purposes..."). Sprint believes that even a scaled-back audit requirement is highly problematic. A limited audit mechanism requirement would still be costly to develop and operate. And, given the fact that there is absolutely no record evidence demonstrating that an electronic audit system is necessary, even a limited system does not pass muster, as it must, under a cost/benefit analysis.

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[4]For similar reasons, the Commission should reject the claim by both LCI and Comptel that "ILECs' unique market position," Comptel at 13, requires that the Commission adopt strict rules "that limit the "ILECs ability to misuse CPNI to anticompetitive ends." LCI at 11. Like MCI, neither LCI nor Comptel presents any evidence demonstrating that non-BOC ILECs have misused CPNI.

Sprint believes that the Commission's other safeguards will be sufficient to ensure carrier compliance with the new CPNI requirements as set forth in Section 222 and as implemented by the Commission. An electronic audit system would only be necessary and should be imposed on an individual carrier basis and on the basis of solid evidence that such carrier is misusing its customers' CPNI.

IV. THE COMMISSION SHOULD GRANDFATHER EXISTING AUTHORIZATIONS FROM CUSTOMERS TO DISCLOSE THEIR CPNI ONLY WHERE THE CARRIER ASKED FOR AND OBTAINED EXPRESS CUSTOMER APPROVAL.

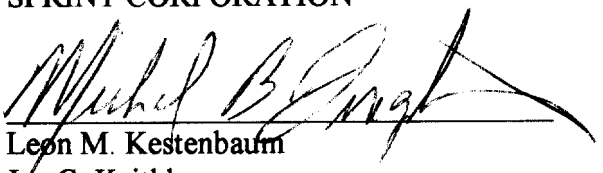
AT&T suggests that the Commission allow carriers "to rely on the express approvals they obtained from customers, consistent with the provisions of Section 222(c)(1) of the Act, prior to release of the *CPNI Order*." AT&T at 18. Sprint strongly agrees. Like AT&T, in the over two year period between the time the Telecommunications Act of 1996 became law and the Commission released its *CPNI Order*, Sprint has informed customers that they had to give their permission to enable Sprint to review their account information in order to inform them about other Sprint-branded services and products. Customers either had to expressly authorize Sprint to access their account information for such purposes or expressly refuse to grant Sprint such permission. Sprint currently has several hundred thousand authorizations from its customers on file.

Plainly, it would be confusing to customers and a waste of Sprint's resources if Sprint had to re-contact its customers and again ask for their permission to use their CPNI in order to sell them Sprint services and products outside of the existing carrier-customer service relationship. Like AT&T, Sprint is willing to provide written notice informing those customers who have previously authorized Sprint to access and use their CPNI of their CPNI rights as now required by the Commission. Sprint will also explain to these customers that they have the right to revoke

their previous authorizations. But until these customers exercise their revocation rights, their previous authorizations should remain in effect. Given that Sprint acted in good faith to comply the requirements of Section 222 prior to the Commission's *CPNI Order* and sought CPNI use approvals from its customers, Sprint should not be forced to expend resources to re-acquire such approvals.[5]

Respectfully submitted,

SPRINT CORPORATION



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[5]Sprint's request to grandfather its previous authorizations is consistent with the Common Carrier Bureau's decision to allow the BOCs and GTE to rely upon the authorizations obtained under the *Computer III* regime from their business customers with 20 or more lines to use CPNI to market enhanced services. *Clarification Order*, DA 98-971 released May 21, 1998 at ¶10. LCI's two arguments (at 18) as to why the Bureau's decision in the *Clarification Order* to allow the BOCs to rely upon its *Computer III* authorizations is wrong, even if valid, are not relevant to Sprint's request here. First, Sprint's customers were informed of their CPNI rights immediately prior to obtaining consent. Indeed, informed consent -- and not the so-called notice and opt-out approach of *Computer III* -- is a necessary condition for grandfathering any previous authorizations including those obtained by the BOCs and GTE under the *Computer III* regime. Second,, such authorizations were obtained in today's environment.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Opposition and Comments of Sprint Corporation** was sent by hand or by United States first-class mail, postage prepaid, on this the 25th day of June, 1998 to the parties on the attached list.

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